

COUNTY OF FRANKLIN



MT. VERNON, TEXAS

RECEIVED

FROM THE OFFICE OF:
WALT BEARS, JR.
COUNTY ATTORNEY
P.O. BOX 374

AUG 16 1993

Opinion Committee

August 11, 1993

Madeleine Johnson
Opinion Committee
Texas Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

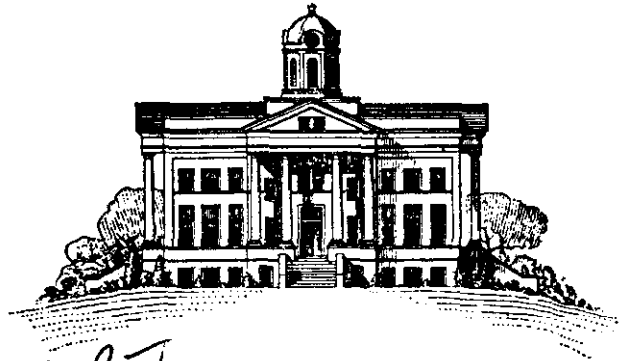
Re: Request for Opinion on House Bill No. 859

Dear Madeleine Johnson:

I am contacting you to request an opinion as to whether House Bill No. 859 applies to permit fees assessed by the Franklin County Water District.

The Franklin County Water District is a governmental body and is a water conservation and reclamation district. One of the responsibilities of the Franklin County Water District is the maintenance of Lake Cypress Springs located in Franklin County, Texas. Upon payment of a permit fee, the Franklin County Water District allows persons who possess property adjacent to Lake Cypress Springs to remove as little or as much raw water as each may desire for irrigation or for other onsite purposes so long as it is not used for human consumption. In other words, the water is not potable water. At the present time the permit fee is an annual fee in the amount of \$25.00. The permit fee is the same regardless of the amount of water withdrawn from Lake Cypress Springs. The Franklin Water District provides no equipment, labor, advice, or instructions concerning the removal of the water from Lake Cypress Springs.

House Bill No. 859 defines a government-operated utility as including a governmental body that provides water, wastewater, sewer, gas, garbage, electricity, or drainage service for compensation.



MBJ

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One question that I would like resolved is whether the activity of the Franklin County Water District in permitting raw water removal is providing water service for compensation as set forth in House Bill No. 859. In other words, may a person who pays the permit fee require the Franklin County Water District to keep their address, telephone number, or social security number confidential.

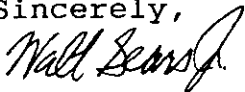
I have enclosed a copy of House Bill No. 859 for your review. I have researched this question in attempt to determine whether the term "water" as used in House Bill No. 859 means potable water or whether the term means to include any kind of water whether potable or not. My research did not reveal any special definition or further clarity on what the term is intended to include.

Please review this matter and issue an opinion concerning the applicability of House Bill No. 859 to the practices of the Franklin County Water District.

Also, I have an additional question concerning House Bill No. 859. The preface to House Bill No. 859 purports to provide a criminal penalty for violation of House Bill No. 859. However, the bill as enacted does not appear to provide any specific criminal penalty. As county attorney, I am uncertain as to whether there are any criminal penalties for a violation. Please advise as to whether there are criminal penalties for violations and describe which prosecutor, if any, would have responsibility to commence prosecution of a violation occurring in Franklin County.

Thank you for your attention to this letter. I look forward to receiving a response from you soon.

Sincerely,



Walt Sears, Jr.
County Attorney

Enclosure (1) one